

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

---

BEVERLY ARLENE MORaine,

Civil No. 08-5982 (JRT/RLE)

Plaintiff,

v.

**ORDER REJECTING REPORT AND  
RECOMMENDATION**

SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

---

Beverly Arlene Moraine, 1114 17<sup>th</sup> Avenue North, South St. Paul, MN 55075, plaintiff *pro se*.

Lonnie F. Bryan, Assistant United States Attorney, **OFFICE OF THE UNITED STATES ATTORNEY**, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415; for defendant.

On November 13, 2008, plaintiff Beverly Arlene Moraine filed this *pro se* action seeking review of a denial of her request for disability insurance benefits. Defendant Social Security Administration (“SSA”) filed its answer and a certified copy of the hearing transcript on March 31, 2009, giving Moraine sixty days to file a motion for summary judgment. *See* Local Rule 7.2(b)(1).

On June 11, 2009, United States Magistrate Judge Raymond L. Erickson issued an order indicating that sixty days had passed from the filing of SSA’s answer, and giving Moraine ten days to demonstrate good cause for why she had not filed a timely summary judgment motion. On July 1, 2009, after Moraine still had not filed her motion or an

explanation of her delay, the Magistrate Judge filed a Report and Recommendation recommending that Moraine's action be dismissed.

Following the Magistrate Judge's Report and Recommendation, SSA's counsel filed a Response indicating that it had received correspondence from Moraine shortly after the filing of the Magistrate Judge's June 11 Order. SSA's counsel indicates that it appeared from Moraine's letter that she may have thought that the June 11 Order required her to respond directly to the United States Attorney's Office, rather than to the Court. SSA indicates that the Magistrate Judge was not aware of this correspondence at the time of his Report and Recommendation. Thus, SSA suggests that Moraine be given an additional ten days to respond to the Magistrate Judge's June 11 order.

Eight days after SSA filed this suggestion, Moraine filed a motion for summary judgment, and also sent letters seeking to explain the reasons for her delay to both the Clerk of Court and the Magistrate Judge. Moraine described difficulties that arose from her apparently mistaken belief that Northwest Disability had agreed to handle her representation, and additional difficulties that she encountered in tracking down her medical records and determining where they should be sent.

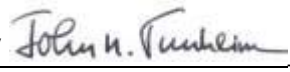
In light of the position of the SSA, Moraine's *pro se* status, the relatively short period of time between the applicable deadline and Moraine's correspondence with the United States Attorney's Office and other Court staff, and Moraine's plausible reasons for her delay, the Court finds that it is appropriate to return this action to the Magistrate Judge for consideration of the merits of Moraine's summary judgment motion. *See* Fed. R. Civ. P. 6(b)(1)(B) (allowing for extensions of time where a party has failed to act

because of excusable neglect). Thus, the Report and Recommendation of the Magistrate Judge is rejected.

### **ORDER**

Based on the foregoing, all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that the Report and Recommendation dated July 1, 2009 [Docket No. 15] is **REJECTED**. This action is **REMANDED** to the Magistrate Judge for consideration of the merits of Moraine's summary judgment motion.

DATED: August 25, 2009  
at Minneapolis, Minnesota.

s/   
\_\_\_\_\_  
JOHN R. TUNHEIM  
United States District Judge